Filed 3/13/09 In re H.V. CA2/3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re H.V., a Person Coming Under the Juvenile Court Law. _____ THE PEOPLE, Plaintiff and Respondent, v. H.V., Defendant and Appellant.	B204445 (Los Angeles County Super. Ct. No. JJ15374)

APPEAL from an order of wardship of the Superior Court of Los Angeles County, Marilyn Mordetzky, Referee. Affirmed with directions.

Bruce G. Finebaum, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Attorney General, Kristofer Jorstad and Nima Razfar, Deputy Attorneys General, for Plaintiff and Respondent.

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Appellant H.V., a minor, appeals from the order of wardship (Welf. & Inst. Code, § 602) entered after a determination that he possessed a weapon on school grounds (Pen. Code, § 626.10, subd. (a)), following the denial of a suppression motion (Welf. & Inst. Code, § 700.1). The court ordered appellant placed home on probation. We affirm the order of wardship with directions.

FACTUAL SUMMARY

Viewed in accordance with the usual rules on appeal (*In re Dennis B.* (1976) 18 Cal.3d 687, 697), the evidence, the sufficiency of which is undisputed, established that on July 12, 2007, Jesus Angulo, the principal at Southeast High School in Los Angeles County, discovered appellant in possession of a knife on school grounds.

CONTENTIONS

Appellant claims the trial court erred by (1) denying his suppression motion, and (2) setting a maximum term of physical confinement.

DISCUSSION

1. *The Trial Court Properly Denied Appellant's Suppression Motion.*

a. *Pertinent Facts.*

On November 14, 2007, appellant filed a motion to suppress evidence. He sought suppression of, inter alia, any items recovered from appellant, on the grounds Angulo detained appellant without reasonable suspicion and illegally searched him. The hearing on the suppression motion was conducted concurrently with the November 28, 2007 adjudication.

Viewed in accordance with the usual rules on appeal (*In re Brian A.* (1985) 173 Cal.App.3d 1168, 1173), the evidence established that, on the date of the adjudication, Angulo was the principal of the above mentioned school. About 7:30 a.m. on July 12, 2007, Angulo, while at the school and working as the principal, saw appellant.

Angulo testified that, prior to making contact with appellant, Angulo had received information from an anonymous call that was made to the school. The caller was a

parent. Angulo testified the parent "described a group of kids smoking out on the street" adjacent to, and "right in front of," the school.

Angulo testified that, based on the tip, he went out to that location. The prosecutor asked if Angulo contacted anybody, and Angulo testified that he did and that "[w]e" came across a group of young men. Appellant was one of the persons in the group. The group matched the description given by the parent.

During the prosecutor's direct examination of Angulo, the prosecutor asked whether, in contacting that group, Angulo asked them any questions or, more importantly, if Angulo noticed anything. Angulo replied there was a strong odor of marijuana. The prosecutor asked if Angulo contacted appellant in relation to that, and Angulo indicated he contacted everyone in the group. The prosecutor then asked if Angulo searched appellant at that point. Angulo replied yes, and testified that, at that time, "we" brought him into the school. Angulo also testified that "[w]e" conducted an administrative search. Angulo further testified that, while conducting the administrative search, Angulo recovered from appellant a locking blade "on" appellant's front right pocket.

During cross-examination, Angulo testified he previously had said that he brought appellant into the school. He also indicated that, therefore, the group was outside the school when Angulo first contacted the group.

During cross-examination, Angulo denied that the anonymous caller give Angulo any more specific information about the group of kids. When appellant asked if any general physical descriptions were provided concerning the "kid", Angulo testified it was just a group of boys walking down the street. Appellant asked if a group of boys were walking down the street and smoking something, and Angulo replied they were the only group on the street at the time he was looking.

Appellant asked whether the marijuana odor was coming from a specific person or from the group in general. Angulo indicated the odor was coming from the group in general. Angulo testified he did not specifically notice the odor of marijuana coming

from appellant. During redirect examination, the prosecutor asked Angulo where exactly in relation to the school did Angulo first contact appellant. Angulo indicated his first contact with appellant occurred right in front of the school.

Following argument on the suppression motion, the court stated, ". . . the court is not going to grant the motion to suppress. I believe that the principal absolutely had reasonable suspicion, and it's minimal [*sic*]. This is a school ground, and we're there for safety reasons to protect these children, and I do believe that there was a reasonable suspicion for the search."

b. *Analysis.*

(1) *Angulo Did Not Illegally Detain Appellant.*

Appellant claims Angulo illegally detained and searched him. We reject appellant's claim.

The threshold question is whether Angulo detained appellant. Appellant, conceding Angulo was the equivalent of a peace officer,[1] argues (1) Angulo detained appellant outside school grounds, (2) the detention was lawful only if Angulo had a reasonable suspicion that appellant violated, or was violating, the law, and (3) Angulo lacked such a suspicion. We reject the argument.

A person is "seized" within the meaning of the Fourth Amendment only when the person is physically restrained or voluntarily submits to a peace officer's show of authority. (*People v. Johnson* (1991) 231 Cal.App.3d 1, 10-11; *People v. Arangure* (1991) 230 Cal.App.3d 1302, 1307.) The requisite show of authority exists when a reasonable person would believe that the person was not free to leave. (*People v. Johnson, supra,* at pp. 10-11; *People v. Arangure, supra,* at pp. 1305-1308.)

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[1] Appellant asserts, "When, as here, the 'officer's' (i.e., school administrator's) suspicion is based on information from a third party, the existence of reasonable suspicion must be determined from the apparent reliability of the informant and the nature of the information supplied." Of course, if Angulo's actions during his encounter with appellant did not constitute governmental action, no Fourth Amendment violation occurred.

"The United States Supreme Court has made it clear that a detention does not occur when a police officer merely approaches an individual on the street and asks a few questions. [Citation.] As long as a reasonable person would feel free to disregard the police and go about his or her business, the encounter is consensual and no reasonable suspicion is required on the part of the officer. Only when the officer, by means of physical force or show of authority, in some manner restrains the individual's liberty, does a seizure occur. [Citations.]" (*In re Manuel G.* (1997) 16 Cal.4th 805, 821.)

" '[I]n order to determine whether a particular encounter constitutes a seizure, a court must consider all the circumstances surrounding the encounter to determine whether the police conduct would have communicated to a reasonable person that the person was not free to decline the officers' requests or otherwise terminate the encounter.' [Citation.]. This test assesses the coercive effect of police conduct as a whole, rather than emphasizing particular details of that conduct in isolation. [Citation.] Circumstances establishing a seizure might include any of the following: the presence of several officers, an officer's display of a weapon, some physical touching of the person, or the use of language or of a tone of voice indicating that compliance with the officer's request might be compelled. [Citations.] The officer's uncommunicated state of mind and the individual citizen's subjective belief are irrelevant in assessing whether a seizure triggering Fourth Amendment scrutiny has occurred. [Citation.]" (*In re Manuel G., supra,* 16 Cal.4th at p. 821.)

We have recited the pertinent facts. Angulo testified he went out to the location and saw a group matching the description. Angulo contacted the group, which included appellant. While contacting the group, Angulo detected an odor of marijuana coming from the group. The trial court reasonably could have concluded it was only after Angulo detected the odor that he brought appellant into the school.

In sum, there was no substantial evidence that before, or when, Angulo brought appellant into the school (1) Angulo physically restrained him or appellant voluntarily submitted to a show of authority, or (2) Angulo's encounter and actions with appellant

were anything other than consensual. That is, there was no substantial evidence that Angulo detained appellant.[2]

(2) *Any Detention of Appellant was Lawful.*

Moreover, a detention is reasonable under the Fourth Amendment when the detaining officer can point to specific articulable facts which, considered in light of the totality of the circumstances, provide an objective manifestation that the person detained may be involved in criminal activity. (*People v. Souza* (1994) 9 Cal.4th 224, 231.)

In the present case, the unidentified parent reported that a group of kids were smoking on the street adjacent to, and right in front of, the school. The parent also indicated a group of boys were walking down the street.

Angulo went out to that location and encountered a group of young men matching the parent's description. The group was the only group on the street at the time. Appellant was a member of the group. Angulo first contacted appellant right in front of the school. Angulo detected a strong odor of marijuana emanating from the group. As mentioned, the trial court reasonably could have concluded that it was only after Angulo detected the odor that he brought appellant into the school.[3]

Even if Angulo detained appellant when Angulo brought him into the school, we conclude the facts that preceded the detention provided an objective manifestation that every member of the group, including appellant, had committed and/or was committing the offenses of being a minor in possession of tobacco, and possession of marijuana. Appellant's detention was proper. (Cf. *People v. Butler* (2003) 111 Cal.App.4th 150, 160; *Mann v. Superior Court* (1970) 3 Cal.3d 1, 7; *In re Willy L.* (1976) 56 Cal.App.3d 256, 263; *People v. Lovejoy* (1970) 12 Cal.App.3d 883, 887; Pen. Code, § 308, subd. (b); Health & Saf. Code, § 11357, subds. (b) & (c).)

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[2] To the extent the trial court's reasoning differs from ours, we review the trial court's ruling, not its reasoning. (*People v. Mason* (1991) 52 Cal.3d 909, 944.)

[3] We note appellant asserts the anonymous caller claimed the kids were students.

Appellant's reliance on *Florida v. J.L.* (2000) 529 U.S. 266 [146 L.Ed.2d 254] (*J.L.*) is misplaced. In *J.L.*, police received an anonymous tip that a young man carrying a gun was wearing a plaid shirt and standing on a street corner. Police detained J.L., who was on the corner and wearing a plaid shirt, but police lacked corroborative illegal activity. The high court concluded the detention was illegal on the ground the officers lacked a reasonable suspicion to detain J.L. since the detention was based entirely on an anonymous tip, lacked corroboration, and had no predictive value. (*Id.* at pp. 270-272.)

However, the present case is not one involving merely an anonymous tip. Although the caller apparently did not provide the caller's name, the caller did identify himself or herself as a parent, and therefore was a citizen-informant. (Cf. *In re Joseph G.* (1995) 32 Cal.App.4th 1735, 1741.) The parent reported (1) a group of kids were smoking on the street adjacent to, and right in front of, the school, and (2) a group of boys were walking down the street.

Angulo received corroboration. He went out to the location and encountered a group of young men matching the parent's description. The group was the only group on the street at the time. Appellant was a member of the group, and Angulo first contacted appellant right in front of the school. Angulo detected a strong odor of marijuana emanating from the group. These facts corroborated not only the existence and location of the group, and the youthful age of its members, but their participation in illegal smoking activity.

(3) *Any Search of Appellant Was Lawful.*

The remaining issue is whether Angulo's recovery of the knife from appellant on school grounds was the product of a lawful search. We assume Angulo reached into appellant's pocket to obtain the knife, and that that entry into appellant's pocket constituted a search.

Appellant concedes the search of a student by public school officials on school grounds does not require probable cause, and that, instead, the reasonable suspicion standard applies in this case. (See *In re Joseph G., supra,* 32 Cal.App.4th at pp. 1739-

1740.) Based on the facts previously recited, we believe Angulo had a reasonable suspicion that each group member whom Angulo contacted, including appellant, illegally possessed tobacco and/or marijuana. Any search of appellant's pocket, resulting in the recovery of the knife, was therefore proper. The trial court did not err by denying appellant's suppression motion.

2. *The Court Did Not Erroneously Set A Maximum Term of Physical Confinement.*

At the dispositional hearing on November 28, 2007, the court stated, "Minor's care, custody, control, conduct is hereby placed under the supervision of the probation department. The minor is permitted to remain in the home of the mother under the following terms and conditions." The court then imposed probation conditions. The reporter's transcript of the hearing does not reflect that the court referred to physical confinement of appellant, and does not reflect that the court imposed a maximum term of physical confinement. However, the November 28, 2007 minute order reflects, "Minor may not be held in physical confinement for a period to exceed three years."

Appellant claims the trial court erred by setting a maximum term of confinement, and the dispositional minute order's reference to said term must be stricken. We partially agree. The court did not order appellant removed from the physical custody of his parents; instead, the court ordered that appellant remain in the home of his mother, subject to supervision on probation. Therefore, there would have been no need for the court to include a maximum term of confinement in the dispositional order. (*In re Ali A.* (2006) 139 Cal.App.4th 569, 571.)

However, it does not appear that the trial court imposed a maximum term of physical confinement. We conclude the reporter's transcript prevails over the clerk's transcript (cf. *People v. Smith* (1983) 33 Cal.3d 596, 599; *People v. Mesa* (1975) 14 Cal.3d 466, 471) and, therefore, the court did not impose a maximum term of physical confinement. Nonetheless, we will direct the trial court to strike from its dispositional minute order the erroneous reference to the maximum term of physical confinement. (Cf. *People v. Solorzano* (1978) 84 Cal.App.3d 413, 415, 417; Pen. Code, § 1260.)

DISPOSITION

The order of wardship is affirmed. The trial court is directed to strike from its November 28, 2007 minute order the language stating, "Minor may not be held in physical confinement for a period to exceed three years."

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KITCHING, J.

We concur:

KLEIN, P. J.

CROSKEY, J.